

RECOGNITION OF THE MAJORITY LEADER

The PRESIDING OFFICER. The majority leader is recognized.

MOMENT OF SILENCE IN MEMORY OF JUSTICE ANTONIN SCALIA

Mr. MCCONNELL. Madam President, I ask unanimous consent that the Senate observe a moment of silence in memory of Justice Antonin Scalia.

The PRESIDING OFFICER. Without objection, it is so ordered.
(Moment of silence.)

REMEMBERING JUSTICE ANTONIN SCALIA

Mr. MCCONNELL. Madam President, I wish to say a few words about a towering figure of the Supreme Court who will be missed by many. Antonin Scalia was literally one of a kind. In the evenings, he loved nothing more than a night at the opera house. During the day, he often starred in an opus of his own.

For most watchers of the Court, even many of Scalia's most ardent critics, the work he produced was brilliant, entertaining, and unmissable. Words had meaning to him. He used them to dissect and refute, to amuse and beguile, to challenge and persuade. And even when his arguments didn't carry the day, his dissents often gathered the most attention anyway.

President Obama said that Justice Scalia will be "remembered as one of the most consequential judges and thinkers to serve on the Supreme Court." I certainly agree. It is amazing that someone who never served as Chief Justice could make such an indelible impact on our country. He is, in my view, in league with Oliver Wendell Holmes, Louis Brandeis, and John Marshall Harlan as perhaps the most significant Associate Justices ever.

I first met him when we both served in the Ford administration's Justice Department. I was fortunate, as a young man, to be invited to staff meetings that featured some of the most influential conservative judicial minds of the time. Robert Bork was there. He was the Solicitor General. Larry Silberman was there. He was the Deputy Attorney General. Everyone in the Department agreed on two things: One, Antonin Scalia was the funniest lawyer on the staff; and, two, he was the brightest.

Scalia was usually the smartest guy in whatever room he chose to walk into. Of course, he didn't need to tell you he was the smartest. You just knew it.

I came back to Washington a few years later as a Senator on the Judiciary Committee, serving there when Scalia was nominated to the Supreme Court. His views on the Court were strong, and they were clear. Some tried to caricature his judicial conservatism as something it was not. It was not political conservatism.

Scalia's aim was to follow the Constitution wherever it took him, even if he disagreed politically with the outcome. We saw that when he voted to uphold the constitutional right of protesters to burn the American flag. He upheld their right to do that. This is what he said: "If it was up to me, I would have thrown this bearded, scandal-wearing flag burner into jail, but it was not up to me."

It was up to the Constitution. "If you had to pick . . . one freedom . . . that is the most essential to the functioning of a democracy, it has to be freedom of speech," Scalia once said. He went on:

Because democracy means persuading one another. And then, ultimately, voting. . . . You can't run such a system if there is a muzzling of one point of view. So it's a fundamental freedom in a democracy, much more necessary in a democracy than in any other system of government. I guess you can run an effective monarchy without freedom of speech. I don't think you can run an effective democracy without it.

Justice Scalia defended the First Amendment rights of those who would express themselves by burning our flag just as he defended the First Amendment rights of Americans who wished to express themselves by participating in the changemaking process of our democracy: the right to speak one's mind, the right to associate freely, the rights of citizens, groups, and candidates to participate in the political process.

Numerous cases involving these kinds of essential First Amendment principles came before the Court during his tenure. I filed nearly a dozen amicus curiae briefs in related Supreme Court cases in recent years, and I was the lead plaintiff in a case that challenged the campaign-finance laws back in 2002.

These core First Amendment freedoms may not always be popular with some politicians who would rather control the amount, nature, and timing of speech that is critical of them, but Scalia recognized that protecting the citizenry from efforts by the government to control their speech about issues of public concern was the very purpose of the First Amendment. He knew that such speech—political speech—lay at its very core.

It is a constitutional outlook shared by many, including the members of an organization such as the Federalist Society. You could always count on him attending the Society's annual dinner. One of his five sons, Paul, is a priest, and he always gave an opening prayer. This is what Scalia said about that.

If in an old-fashioned Catholic family with five sons you don't get one priest out of it, we're in big trouble. The other four were very happy when Paul announced that he was going to take one for the team.

That is the thing about Antonin Scalia. His opinions could bite. His wit could be cutting. But his good humor was always in abundant supply. One study from 2005 concluded decisively—or as decisively as one can—that Scalia was the funniest Justice on the Court.

He was also careful not to confuse the philosophical with the personal.

I attack ideas. I don't attack people. If you can't separate the two, you gotta get another day job.

These qualities endeared him to many who thought very differently than he did—most famously, his philosophical opposite on the Court, Ruth Bader Ginsburg. Their friendship began after Ginsburg heard him speak at a law conference. Here is what she said: "I disagreed with most of what he said," she recalled, "but I loved the way he said it."

Scalia put it this way:

She likes opera, and she's a very nice person. What's not to like?

Well, he continued, "except her views on the law."

Ginsburg called him Nino. Scalia referred to the pair as "the Odd Couple." They actually vacationed together. They rode elephants. They parasailed. And just a few months ago, their relationship was captured in the perfect medium: opera, their shared love.

"Scalia/Ginsburg: A (Gentle) Parody of Operatic Proportions" premiered last summer. In it, a jurist named Scalia is imprisoned for "excessive dissenting," and it is none other than Ginsburg, or an actress faintly resembling her, who comes crashing through the ceiling to save him. It is the kind of show that is larger than life, and so was Nino Scalia.

He leaves behind nine children and a wife who loved him dearly, Maureen. Maureen would sometimes tease her husband that she had her pick of suitors and could just as well have married any of them. But she didn't, he would remind her, because they were wishy-washy, and she would have been bored.

"Whatever my faults are," Scalia once said, "I am not wishy-washy."

Far from wishy-washy and anything but boring, Justice Scalia was an articulate champion of the Constitution. He was a personality unto himself, and his passing is a significant loss for the Court and for our country. We remember him today. We express our sympathies to the large and loving family he leaves behind. We know our country will not soon forget him.

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REMEMBERING JUSTICE ANTONIN SCALIA AND FILLING THE SUPREME COURT VACANCY

Mr. REID. Madam President, we were all shocked by the sudden passing of Supreme Court Justice Antonin Scalia. Justice Scalia and I had our differences. However, there was no doubting his intelligence or dedication to the country. I offer my condolences to the entire Scalia family, who laid to rest a devoted husband, father, and grandfather this weekend.